



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

|

[REDACTED]
[REDACTED]
[REDACTED]

FOO/159086

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on September 04, 2014, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment has been correctly determined.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County. Petitioner's FoodShare household size is 1 person.
2. Petitioner filed this appeal to contest the reduction in her FoodShare allotment effective August 1, 2014. The allotment dropped from \$57.00 to \$15.00.
3. The agency determined Petitioner's gross income to be \$893.00 in Social Security benefits.

4. In determining Petitioner's FoodShare allotment the agency had been crediting Petitioner with the following deductions: a standard deduction of \$152, a shelter deduction of \$301.50 based upon rent of \$222.00 and a standard utility allowance of \$450.00.
5. The law on the utility deduction changed as of April 28, 2014 for applications and upcoming renewals. The new law no longer provided for an automatic \$450.00 per month utility credit.
6. Petitioner's FoodShare case was reviewed in July 2014. In processing Petitioner's review the agency discontinued Petitioner's \$450.00 standard utility allowance. This resulted in the reduction in Petitioner's FoodShare from the \$57.00 per month to \$15.00 per month.
7. Prior to the hearing the agency recognized an error in the processing of Petitioner's review and the applicable utility deduction. As a Wisconsin Energy Assistance recipient Petitioner was entitled to the full \$450.00 utility allowance. The agency corrected the error and issued a supplemental FoodShare benefit for August 2014 in the amount of \$42.00 to bring Petitioner's FoodShare allotment back to \$57.00.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$152 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) Shelter and utility expenses deduction – the utility allowance is a variable based on a number of factors but the ultimate deduction equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

In reviewing the calculation based on the available evidence, I cannot note any errors as the agency already made corrections prior to the hearing.

Petitioner would like more FoodShare and also notes that she has two service cats for which she would like additional FoodShare. There is, however, no law or policy in the FoodShare program permitting such additional benefits. Also, the Division of Hearings and Appeals must follow the law and cannot create new benefits.

CONCLUSIONS OF LAW

That the available evidence is sufficient to demonstrate that the agency has correctly determined Petitioner's FoodShare allotment as of August 2014 following the July 2014 review.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of October, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 7, 2014.

Kenosha County Human Service Department
Division of Health Care Access and Accountability